

JUDGE DANIELS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CIV 7957

X

GILBERT POLANCO, JR.,

Plaintiff,

-against-

LOCAL 32 BJ AND MICHAEL FISHMAN,  
PRESIDENT OF LOCAL 32BJ,

Defendants.

**NOTICE OF REMOVAL  
OF A CIVIL ACTION**

SEP 11 2007  
U.S.D.C. S.D. N.Y.  
CASHIERS

X

Defendants SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ

("Local 32BJ" or "Union"), misnamed in the caption as Local 32BJ, and MICHAEL FISHMAN, by their attorneys, submit this petition for removal pursuant to 28 U.S.C. §§ 1441 and 1446.

1. Plaintiff Gilbert Polanco, Jr. commenced an action in the Supreme Court of the State of New York, County of New York, entitled *GILBERT POLANCO, JR., Plaintiff, v. LOCAL 32BJ and MICHAEL FISHMAN, PRESIDENT OF LOCAL 32BJ, Defendants*, bearing Index No. 07/107203.
2. Plaintiffs' Summons and Amended Verified Complaint were served on Defendant Local 32BJ on August 28, 2007. Copies of the same are annexed as **Exhibit A**.
3. Local 32BJ is a labor organization within section 2(5) of the Labor Management Relations Act ("Act"), 29 U.S.C. § 152(5), and represents employees "in an industry affecting commerce" within the meaning of section 301(a) of the Act, 29 U.S.C. § 185(a). The Union's headquarters are at 101 Avenue of the Americas, New York, New York 10013.
4. Plaintiff alleges in his Complaint that Local 32BJ breached its duty of fair representation. The Supreme Court has held in *Breininger v. Sheet Metal Workers*

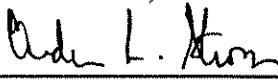
*Int'l. Assn., Local Union No. 6*, 493 U.S. 67, 83 (1989) that claims alleging a breach of the duty of fair representation arise under the National Labor Relations Act, 29 U.S.C. § 151 et al. and therefore federal courts have jurisdiction to hear duty of fair representation suits.

5. Accordingly, this action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.
6. Defendants have not served an answer, made motions, or made any appearance or argument in the State Court action.
7. This Notice of Removal is filed within 30 days after receipt by Defendants of the papers annexed as Exhibit A, and before Defendants have made any appearance in the State Court action.

WHEREFORE, Defendants respectfully request that the State Court action be removed from the Supreme Court of the State of New York, County of New York to this Court.

Dated: New York, New York  
September 11, 2007

Office of the General Counsel  
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By:   
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Attorneys for Defendants Local 32BJ  
and Michael Fishman